

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, .
 .
Plaintiff, .
 . Case No. 22-mj-10339
vs. .
 . Newark, New Jersey
MITCHELL HENNESSEY, . December 13, 2022
 .
Defendant. .
 .

TRANSCRIPT OF INITIAL APPEARANCE
BEFORE THE HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared (heard via Zoom)):

For the Government: KELLY M. LYONS, ESQ.
DOJ-CRM
970 Broad Street, Suite 700
Newark, NJ 07102
(202) 923-6451
kelly.m.lyons@usdoj.gov

For the Defendant: JEFFREY BROWN, ESQ.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(212) 698-3511
jeffrey.brown@dechert.com

Audio Operator:

Transcription Service: KING TRANSCRIPTION SERVICES
3 South Corporate Drive, Suite 203
Riverdale, NJ 07457
(973) 237-6080

Proceedings recorded by electronic sound recording; transcript
produced by transcription service.

1 (Commencement of proceedings)

2

3 THE COURT: All right. Good afternoon, everyone.
4 This is the matter of United States versus Mitchell
5 Hennessey. This is a Rule 5 on an indictment from the U.S.
6 District Court for Southern District of Texas.

7 Can I have appearances, please, beginning with the
8 Government.

9 MS. LYONS: Good afternoon, Your Honor. Kelly
10 Lyons on behalf of the United States.

11 THE COURT: All right. Good afternoon, Ms. Lyons.
12 And how about for Mr. Hennessey?

13 MR. BROWN: For Mr. Hennessey, Jeffrey Brown from
14 the Dechert LLP for purposes of today's proceedings only.

15 THE COURT: All right. Thank you, Mr. Brown.

16 So let me begin with advising Mr. Hennessey of his
17 rights.

18 So, Mr. Hennessey, you have the right to remain
19 silent. You're not required to make -- oh, I'm sorry.

20 Before I get too far down the road, Mr. Brown, does
21 Mr. Hennessey consent to proceeding remotely today? Or would
22 he prefer to adjourn today and conduct this initial
23 appearance in person?

24 MR. BROWN: We consent to remote appearance.

25 THE COURT: All right. Thank you.

1 So, Mr. Hennessey, let me go back to advising you
2 of your rights.

3 You have the right to remain silent. You're not
4 required to make any statements or to speak with anyone at
5 any time. If you do speak, you may stop at any time. And
6 anything you do say can and likely will be used against you
7 in a court of law.

8 I know that you're represented by Mr. Brown from
9 the Dechert firm. But let me just advise you that you have
10 the constitutional right to be represented by counsel in this
11 matter. If you could not afford an attorney, the Court would
12 appoint counsel for you at no cost to you.

13 Also, the Government has an affirmative obligation
14 pursuant to Supreme Court case law -- such as Brady v.
15 Maryland; in Giglio v. United States -- to timely disclose
16 information to the defense as to criminal liability on the
17 charged offenses as well as mitigation of any punishment that
18 may be imposed. So, for example, if the Government had in
19 its possession information that might cast doubt on the
20 credibility of government witnesses or information that might
21 be used to disprove the Government's charges or theory of the
22 case against you, the Government has an obligation to turn
23 that information over to the defense at an appropriate point
24 in the case.

25 If the Government failed to do this, to produce

1 this information -- and I am not at all suggesting that the
2 Government would -- but if the Government failed to do that,
3 the Government itself could face some pretty significant
4 penalties, including but not limited to exclusion of
5 evidence, dismissal of charges, and ethics proceedings.

6 Further, you have the right to have an identity
7 hearing where the Government would have to prove that you
8 are, in fact, the same Mitchell Hennessey as set forth in the
9 indictment.

10 Finally, pursuant to Federal Rule of Criminal
11 Procedure 19, you have the right to request that this case be
12 transferred to the District of New Jersey for the purposes of
13 waiving trial and pleading guilty.

14 Now, please understand, I am not at all suggesting
15 that you necessarily should do those things. I'm merely
16 advising you of your rights.

17 If you were interested in doing that, you would
18 have to so indicate in writing, and then the United States
19 attorneys for both the District of New Jersey and the
20 Southern District of Texas would have to agree to that.

21 All that having been said, Mr. Hennessey, do you
22 understand your rights?

23 You have to -- there you go.

24 THE DEFENDANT: Yes, Your Honor. I do.

25 THE COURT: Okay. Good.

1 And so, obviously, you are represented by counsel.

2 So let me ask Mr. Brown, has the defense received a
3 copy of the indictment in this matter?

4 MR. BROWN: We have, Your Honor. And we will waive
5 any reading.

6 THE COURT: All right. Thank you.

7 Can I ask the Government to please advise the
8 defense of the statutory violations, maximum penalties, and
9 any appropriate advisements.

10 MS. LYONS: Yes, Your Honor.

11 The defendant is charged in Count 1 with conspiracy
12 to commit securities fraud in violation of 18 U.S.C. § 1349.
13 He's also charged in Counts 3 and 5 with securities fraud in
14 violation of 18 U.S.C. §§ 1348 and 2.

15 The maximum penalties for both of those offenses
16 are 25 years in prison; \$250,000 fine or twice the gross
17 pecuniary gain to any person or loss to any person; five
18 years' supervised release; and a \$100 mandatory special
19 assessment.

20 I would also note that we believe the defendant is
21 a United States citizen. However, if he were not a citizen
22 of the United States, conviction of the charged offenses may
23 result in the defendant being subject to immigration
24 proceedings and removed from the United States. If the
25 defendant is a citizen of another country, the defendant has

1 a right to contact the consulate of that country concerning
2 these charges.

3 THE COURT: All right. Thank you.

4 Mr. Brown, have you spoken to Mr. Hennessey
5 concerning the identity hearing and what he wants to do about
6 that?

7 MR. BROWN: Not in detail. My expectation is that
8 we're not going to contest identity, Your Honor. And so I
9 don't know if you want to set a control date for an identity
10 hearing that we could then write to the Court and put off or
11 whatever your preferred procedure is.

12 THE COURT: Yeah. That's fine. Why don't we
13 say -- today's Tuesday. Why don't we say if there's no
14 objection from either side, we'll put it down tentatively for
15 Friday at 2 P.M. Obviously, if the defense notifies the
16 Court and the Government before then that they're waiving
17 identity, then we can adjourn it. Okay? --

18 (Simultaneous conversation)

19 THE COURT: Or cancel --

20 (Simultaneous conversation)

21 MS. LYONS: I'm sorry, Your Honor. Would that be
22 in person or over Zoom, just for planning purposes?

23 THE COURT: Well, let's talk about that.

24 Mr. Brown, what's the defendant's preference?

25 MR. BROWN: I would expect -- I think the chances

|Initial Appearance
|22-mj-10339, December 13, 2022

7

1 of us having it are so limited that I would not want to
2 burden everybody by suggesting that we should prepare to be
3 present in person. So if we were to have it, I think we
4 would waive everyone's appearance and proceed on consent with
5 a virtual hearing.

6 THE COURT: Ms. Lyons, any objection to what
7 Mr. Brown just articulated?

8 MS. LYONS: No objection, Your Honor.

9 THE COURT: All right. Great. That makes sense to
10 me too.

11 So tentatively, Friday, 2 P.M., via Zoom.

12 Okay. If I am not mistaken, the only thing left
13 for us to cover is bail. I trust that parties have seen
14 Pretrial's recommendation.

15 Ms. Lyons, what's the Government reaction?

16 MS. LYONS: No objections to the package and the
17 conditions proposed by Pretrial --

18 THE COURT: All right.

19 Mr. Brown, how about for the defense?

20 MR. BROWN: No objections at present, Your Honor.

21 We may have some qualms about certain of the conditions, but
22 we think the better place to address them is in the Southern
23 District of Texas. And we're willing to accept those terms
24 for present purposes.

25 THE COURT: Well, I won't disagree with that.

1 So -- and I find that in light of the charged
2 conduct and my review of Pretrial Services's report and
3 Title 18 U.S.C. § 3142, the conditions proposed by Pretrial
4 are appropriate and reasonable. So I'm going to order that
5 Mr. Hennessey be released on a \$250,000 unsecured bond,
6 subject to Pretrial Services supervision.

7 Mr. Hennessey must surrender all passports and
8 travel documents to Pretrial Services. He may not apply for
9 any new travel documents. His travel is restricted to the
10 continental United States unless Pretrial Services --
11 sorry -- unless the Court approves otherwise.

12 He must maintain his current residence or a
13 residence approved by Pretrial.

14 He must maintain or actively seek employment as
15 approved by Pretrial.

16 He shall have no contact with co-defendants,
17 victims or witnesses unless in the presence of counsel.

18 He may not post on social media about securities.

19 He may not be employed in the sale of securities or
20 engage in trading securities.

21 For any financial transactions greater than
22 \$10,000, Mr. Hennessey must get the advance approval of
23 Pretrial Services.

24 And at a date to be determined, Mr. Hennessey shall
25 report to the United States marshal in Newark, New Jersey,

1 for processing.

2 Ms. Lyons, anything else for the Government today?

3 MS. LYONS: Nothing from the Government,

4 Your Honor.

5 THE COURT: All right.

6 Mr. Brown, how about on behalf of Mr. Hennessey?

7 MR. BROWN: No. Nothing from us. Thank you,

8 Your Honor.

9 THE COURT: All right. Thank you. And then we'll
10 wait to hear from Mr. Brown concerning Friday. Okay?

11 MR. BROWN: Understood, Your Honor.

12 THE COURT: All right. Have a good afternoon,
13 everyone.

14 Thank you very much.

15 MR. BROWN: Thank you.

16 (Conclusion of proceedings)

17

18

19

20

21

22

23

24

25

|Initial Appearance
|22-mj-10339, December 13, 2022
|Certification

10

Certification

I, SARA L. KERN, Transcriptionist, do hereby certify that the 10 pages contained herein constitute a full, true, and accurate transcript from the official electronic recording of the proceedings had in the above-entitled matter; that research was performed on the spelling of proper names and utilizing the information provided, but that in many cases the spellings were educated guesses; that the transcript was prepared by me or under my direction and was done to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

4th of January, 2023

Signature of Approved Transcriber_____
Date

Sara L. Kern, CET**D-338
King Transcription Services
3 South Corporate Drive, Suite 203
Riverdale, NJ 07457
(973) 237-6080